

JUL 31 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

CONGBAI LI,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-73656

Agency No. A96-344-450

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Congbai Li, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming the Immigration Judge's ("IJ") order denying Li's applications for asylum, withholding of removal, and

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

protection under the Convention Against Torture (“CAT”). To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. Where the BIA adopts the IJ’s decision while adding its own reasons, we review both decisions. *Kataria v. INS*, 232 F.3d 1107, 1112 (9th Cir. 2000). We review the agency’s factual findings for substantial evidence, and reverse only if the evidence compels a contrary finding. *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992). We deny the petition for review in part, and dismiss it in part.

The agency found Li’s testimony incredible based on specific aspects of his demeanor, as well as inconsistencies and implausibilities regarding the circumstances of Li’s arrest and his ability to travel following his probationary release from detention. The record does not compel a contrary finding. *See Singh-Kaur v. INS*, 183 F.3d 1147, 1151 (9th Cir. 1999) (stating credibility determinations based on an applicant's demeanor are given "special deference"). Without providing credible testimony, Li has failed to establish eligibility for asylum or withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

We lack jurisdiction to review the agency’s denial of protection under the CAT because Li failed to raise the issue before the BIA. *See* 8 U.S.C. §

1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not exhausted in administrative proceedings).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.